

Department of Pediatrics Graduate Education Programs

Subject: Policy on Resident Due Process and Grievance
Date: April 30, 2001
Approved: Stephen Wadowski, MD
Pediatrics Program Director

This statement describes the implementation of fair departmental policies and procedures by which academic or other disciplinary actions are taken against residents. This statement also describes the implementation of fair departmental policies and procedures for the adjudication of resident complaints and grievances related to actions that could result in disciplinary measures, dismissal or could significantly threaten a resident's intended career development. These policies are specific for actions at the Departmental level. This policy may be superceded by policies and actions of the employing facility, the sponsoring institution or affiliated institutions. Residents who have been unsuccessful in grieving determinations made according to this policy may have additional recourse through their employing facility and/or the institutional Graduate Medical Education Office.

Due Process Policy

All residents in accredited training programs in the Department of Pediatrics have the right to due process before being subject to disciplinary action unless a delay in taking action is deemed to pose a risk to the individual involved, other residents, students, personnel, patients, families or departmental or hospital operations. In the event of a critical incident, one in which substantial potential for harm to patient welfare occurs or harm to professional colleagues or violation of law, hospital, department or program policy or unprofessional conduct (as described by accrediting agencies and professional organization including ACGME, AAMC, ABP, AAP, AMA, NYS Department of Professional Licensing, NYS Department of Health and local hospital bylaws), a resident may be summarily suspended, without pay, by the Program Director. Upon summary suspension the House Staff Affairs Committee should review the incident and the resident's prior record. The Committee should make recommendations to the Program Director for immediate dismissal and termination or other action. Proceedings for review of critical incidents by the House Staff Affairs Committee should assure due process in determining final outcome for the resident.

The House Staff Affairs Committee on a monthly basis routinely reviews resident performance. During the course of these review meetings, areas for concern involving individual residents are addressed. When serious events occur, the Committee should be convened for an urgent session to review the event(s) and determine course of action. In addition, the Chairperson of the Committee is to review events and circumstances presented to him/her in writing by department faculty or by the Program Director and determine if an urgent session of the Committee is warranted.

In situations where the Committee would consider disciplinary action or other adverse action against a resident, the following procedure is to be followed. Within 15 business days of determination of possible adverse action against a resident, the Chairperson of the House Staff Affairs Committee is to provide the resident with written notice summarizing the Committee's cause for concern and possible actions. Written acknowledgement of the resident's receipt of this notice is required. The Committee must then provide the resident with an opportunity to discover all evidence and information brought against him/her. The resident will then have 10 business days to request a special session of the House Staff Affairs Committee. If requested by the resident, the Committee is to convene a special session within 20 business days of said request during which the resident must have an opportunity to present his/her defense along with any supporting documentation. The resident is entitled to have representation present during the special

session, but said representation is not permitted to participate in the proceedings. In addition, the resident is entitled to have resident peer participation in the Committee's proceedings. The participating resident is to be at the training level of the resident involved and should have been selected by majority vote of all residents at that training level. This individual may be a resident of the Resident Action Group nominated by the other members of the Group at that training level. In its review, the Committee may utilize a variety of procedures. The procedures adopted are those which the Committee believes will provide the parties involved with an opportunity to present their sides of the issues to the Committee so that the Committee can gather information and evidence deemed necessary to make a fair and just decision. After conclusion of the special session or when the resident declines the special session the Committee will have 20 business days in which to present the Program Director with its final determination and recommended course of action. The Program Director must counsel the involved resident and present him/her with written documentation of the Committee's determination and recommended course of action. The resident must give signed acknowledgement of receipt of this notification.

If the House Staff Affairs Committee finds against the resident or if the resident disagrees with the Committee's recommended course of action, the resident is entitled to appeal the Committee's decision to the Chairperson of the Department of Pediatrics. The Chairperson or his/her designee (i.e. the Vice-Chair for Education) is to review the areas of concern, the documentation available to the Committee as well as the documentation provided by the resident. The Chairperson or designee may then decide to uphold the Committee's findings and recommendation, to overturn and dismiss the findings and recommendations or to return the case to the Committee with recommendations for re-review.

If the Department Chairperson or designee finds against the resident or if the resident disagrees with the recommended course of action, the resident is entitled to appeal the decision to the S.U.N.Y. Downstate Medical Center Graduate Medical Education Office.

Due process proceedings are to be documented in the resident's permanent record by signed summary statements, meeting minutes or notices submitted by the Program Director or designee and/or the Chairperson of the House Staff Affairs Committee and/or the Department Chairperson or designee. Copies of such documentation are to be forwarded to the Graduate Medical Education Office of the sponsoring institution. Notification and submission of documentation to personnel office of employing agency and union representative may be necessary.

Administrative actions and corrective measures meant to address areas of professional or academic deficiency or concern do not require due process and should be determined by and acted upon by the Program Director or his/her designee (including the Associate Program Director and Chief Residents). Appropriate documentation of the need for such measures as well as attempted interventions is expected. Corrective measures can include warnings, reprimands, remediation, cognitive and neuropsychological testing, performance monitoring, heightened supervision and/or altered rotation and schedule assignment.

Grievance Policy

All residents in accredited training programs in the Department of Pediatrics have the right to file a grievance or dispute determinations made in the course of due process or any disciplinary action resulting from failure to receive due process. In addition, residents may dispute the application or interpretation of rules and regulations affecting their employment. Residents may grieve the failure to receive written documentation of actions taken against them. Residents may grieve assignments or treatment which are not consistent with a program of education based on their demonstrated performance, sufficient achievement of clinical competencies and requirements for residency training as specified by the applicable Residency Review Committee and which are substantially different from that of all the remaining residents at that residents training level.

Prior to initiating a grievance the resident to verify the circumstances causing the consideration of a grievance. If the resident determines that there is indeed a cause to dispute, he/she should first address the

issue with the faculty immediately responsible for the situation. If the resident fails to achieve a satisfactory outcome, he/she should consult with the SUNY Downstate Pediatric Chief Residents.

If the resident remains dissatisfied, he/she is to submit a written and signed notification of grievance with a description of the situation in dispute to the Program Director or Associate Program Director within 15 business days of discovery and prior to occurrence of the grieved situation. The Program Director or his/her Associate is to determine if the issue of concern is grievable according to preceding descriptions. If the grievance is valid, the Program Director or designee can often satisfactorily arbitrate disputes to the mutual satisfaction of all involved.

After review, if the determination by the Program Director or designee is against the resident, the resident has the right to submit a written petition requesting the House Staff Affairs Committee consider the grievance. The petition must be submitted within 10 business days of the Program Director's decision to the Chairperson of the Committee to determine appropriateness for grievance and for Committee review. If deemed appropriate, the grievance is to be presented to the Committee for review and discussion at the next scheduled House Staff Affairs Committee meeting. If the grievance involves an urgent or serious matter an urgent meeting of the Committee can be called at the discretion of the Committee Chairperson. The Committee Chairperson is to determine if review of the grievance requires invocation of due process policy. In its review, the Committee may utilize a variety of procedures. The procedures adopted are those which the Committee believes will provide the parties involved with an opportunity to present their sides of the issues to the Committee so that the Committee can gather information and evidence deemed necessary to make a fair and just decision. After review of the grievance, the Committee Chairperson is to notify the resident and the Program Director in writing of the Committee's determination within 15 business days. All related correspondence is to be made part of the resident's permanent record.

If the House Staff Affairs Committee's determination is against the resident, the resident has the right within 10 business days of the Committee's decision to appeal that determination and submit written notification of his/her grievance to the Department Chairperson. The Chairperson or his/her designee (i.e. the Vice-Chair for Education) is to review the areas of concern and any available documentation. The Chairperson or designee may then decide to uphold the Committee's findings and recommendation, to overturn and dismiss the findings and recommendations or to return the case to the Committee with recommendations for re-review.

If the Department Chairperson or designee finds against the resident or if the resident disagrees with the recommended course of action, the resident is entitled to appeal the decision to the S.U.N.Y. Downstate Medical Center Graduate Medical Education Office. The resident must submit his/her petition to the GME Committee no later than 15 working days after receiving the Program's or Department's final decision as per GME Committee policy.

The Departmental Grievance policies and procedures are in compliance with SUNY Downstate GME Office policies and are independent of and complementary to those set forth by collective bargaining agreements and hospital policies. Determinations made as a result of providing due process or appealing grievances shall not in any way add, subtract or modify any contract, rule, regulation, authorized existing policy or standing order of the Department of Pediatrics or the Pediatric Residency Program. Such determinations must remain in compliance with all legislative, accrediting agency, institutional and hospital policies and regulations. In no case will monetary awards be provided for grievances determined in the resident's favor.